

KANSAS

Bill Graves
Governor

OFFICE OF THE SECURITIES COMMISSIONER

David Brant
Commissioner

May 8, 2001

Steven M. Prebish
Patzik, Frank & Samotny LTD.
150 South Wacker Drive
Suite 900
Chicago, Illinois 60606

Re: Request for Opinion No. 2001-009
TruServ Corporation
File No: 2001X0000079

Synopsis: The Class A and Class B common stock of TruServ Corporation are not securities within the meaning of K.S.A. 17-1252(j).

Dear Mr. Prebish:

This opinion comes in response to your request for a no action letter regarding potential sales of "stock" to be made by TruServ Corporation (TruServ). I incorporate by reference the facts as represented in your application of March 20, 2001.

Your letter requests that the Office of the Kansas Securities Commissioner take a No-Action position with regard to the common stock of TruServ on the basis that such common stock is not a security within the meaning of K.S.A. 17-1252(j).

Pursuant to K.S.A. 17-1252(j), the term stock is specifically contained in the enumerated list of items that are securities. However, that is not necessarily determinative. Based upon your representations, it appears that the common stock of TruServ does not have the principal attributes of stock noted by the Court in United Housing Foundation, Inc. v. Forman, 421 U.S. 837 (1975). Additionally, it does not appear that the common stock of TruServ has been or will be marketed in such a manner as to take advantage of the title "stock" or to create an expectation that the purchaser would be protected by the various securities laws.

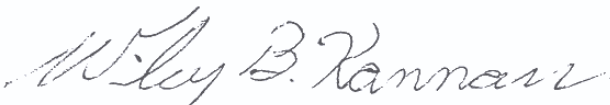
The list of items that are securities pursuant to K.S.A. 17-1252(j) also contains the term "investment contract". In S.E.C. v. W.J. Howey Co., 328 U.S. 293 (1946), the Court adopted a definition of investment contract that has been adopted by the Supreme Court

of Kansas in Activator Supply Co. v. Wurth, 722 P.2d 1081 (1986). The Howey test requires that there be 1) an investment of money, 2) in a common enterprise, 3) with an expectation of profits, and 4) the profits are generated primarily through the efforts of others. Based upon your representations, the only realistic method of obtaining a profit from an investment in the common stock of TruServ is through the retail or rental efforts of the purchaser and the corresponding patronage dividends earned on the common stock based upon their volume of product purchases. Therefore, the common stock of TruServ does not meet the last prong of the Howey test and is not an investment contract.

Because the Class A and Class B common stock of TruServ are not securities under K.S.A. 17-1252(j), staff for the Office of the Kansas Securities Commissioner will take no enforcement action if shares are sold in Kansas without registration.

This opinion is based upon the facts as represented in your letter. Any variance from those facts could result in a different conclusion. You are advised that this opinion is intended solely as an expression of enforcement policy and is not binding on any court or other tribunal.

Sincerely,

A handwritten signature in cursive script, reading "Wiley B. Kannarr".

Wiley B. Kannarr
Associate General Counsel